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11 ZYNGA INC.

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 CV 13 3517

16 ZYNGA INC., a Delaware Corporation,
17 Plaintiff,

18 v.

19 BANG WITH FRIENDS, INC., a Delaware
20 Corporation, and DOES 1-5, inclusive,
21 Defendants.

22 COMPLAINT FOR:

- 23 (1) TRADEMARK INFRINGEMENT
24 UNDER 15 U.S.C. § 1114(1);
25 (2) TRADEMARK INFRINGEMENT
26 UNDER 15 U.S.C. § 1125(A);
27 (3) FALSE DESIGNATION OF ORIGIN
28 UNDER 15 U.S.C. § 1125(A);
(4) FEDERAL DILUTION UNDER 15
U.S.C. § 1125(C);
(5) VIOLATION OF CAL. BUS. & PROF.
CODE § 17200;
(6) STATE COMMON LAW
TRADEMARK INFRINGEMENT; AND
(7) COMMON LAW PASSING OFF AND
UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

FILED
JUL 30 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED BY FAX

1 Plaintiff Zynga Inc. ("Zynga") brings this Complaint against Defendant Bang With
2 Friends, Inc. ("Bang With Friends") and Does 1-5, for injunctive relief and damages under the
3 laws of the United States and the State of California.

4 **NATURE OF THE CASE**

5 1. This is a case about illegal free riding on recognized and valuable intellectual
6 property rights. The "WITH FRIENDS" brand is strong and has been associated with one company
7 – Zynga. Now defendant Bang With Friends has entered the market unlawfully using Zynga's
8 WITH FRIENDS brand with the offering of a service for casual sex ("Bang With Friends").
9 Defendant's principals have admitted their goal was to make their product "as objectionable as
10 possible." They even concealed their identities because, as one of the principals explained, the
11 service is "a little raunchy." With the disclosure of Defendant's intentions to continue – and expand
12 – its acts of infringement, Zynga brings this lawsuit to protect its hard-earned intellectual property
13 rights from Defendant's opportunistic exploitation of Zynga's famous family of WITH FRIENDS
14 trademarks.

15 2. Plaintiff Zynga is the creator of beloved social games played by millions of people
16 over the Internet on their computers and mobile devices. Zynga has created, invested in, and owns
17 valuable brands and marks associated with its popular games. Among them are Zynga's WITH
18 FRIENDS family of games, including WORDS WITH FRIENDS®, SCRAMBLE WITH
19 FRIENDS®, HANGING WITH FRIENDS®, CHESS WITH FRIENDS®, MATCHING WITH
20 FRIENDS™, GEMS WITH FRIENDS™, and RUNNING WITH FRIENDS™. Zynga's WITH
21 FRIENDS marks are recognized both by the United States Patent and Trademark Office and by
22 consumers.

23 3. Defendant Bang With Friends, Inc. is the maker of an Internet application (or "app")
24 also named "Bang With Friends" that is used to connect people for casual sex. Based on public
25 reports, the app was created by three twenty-something men over the course of a night and with the
26 help of "a lot of Red Bull and Vodka." When it came to naming, they did not select from the
27 universe of available unique names. Upon information and belief, they instead named the product
28 "Bang With Friends" – incorporating Zynga's WITH FRIENDS mark in its entirety – to leverage

1 and deliberately trade on the fame of Zynga's WITH FRIENDS family of marks in order to get
2 noticed quickly in the sea of Internet applications.

3 4. Defendant's violation of Zynga's rights has had its intended effect. Defendant's
4 "Bang With Friends" app caught a free ride on the coattails of Zynga's famed WITH FRIENDS
5 family of marks and gained notoriety while simultaneously causing consumer confusion and falsely
6 associating the "Bang With Friends" app with Zynga. For example, one media outlet introduced it
7 with the lead:

8 **"Words with Friends, Scramble with Friends and now, *Bang with Friends?*"**

9 Forbes.com even went so far as to describe the "Bang With Friends" app as

10 **"like Words With Friends, without the letter tiles and clothes."**

11 5. Zynga therefore brings this action to remedy and prevent further harm caused by
12 Defendant's willful infringement and dilution of its rights due to the adult-oriented "Bang With
13 Friends" app. This is an action for violation of the federal Lanham Act, 15 U.S.C. §§ 1114(1),
14 1125(a) and 1125(c); violation of the California statutory law of unfair competition, California
15 Business and Professions Code § 17200; and California common law trademark infringement,
16 passing off and unfair competition. Zynga seeks findings of infringement and injunctive,
17 compensatory and punitive relief.

18 **THE PARTIES**

19 6. Plaintiff Zynga is a corporation organized and existing under the laws of the State of
20 Delaware and has its principal place of business in San Francisco, California.

21 7. Zynga is informed and believes, and on that basis alleges, that Defendant is a
22 Delaware corporation doing business as Bang With Friends (www.bangwithfriends.com) with a
23 corporate office at the address 1 Hallidie Plaza, 2nd Floor, San Francisco, CA 94102 and/or one or
24 more other addresses in or near San Francisco, California.

25 8. Zynga is currently unaware of the identities of defendants Does 1-5 and therefore
26 sues such defendants by such fictitious acronyms. Zynga is informed and believes that discovery
27 will reveal the true identities of these defendants. Zynga will amend this Complaint to identify
28 these defendants by name after their identities are discovered.

9. Zynga is informed and believes and on that basis alleges that the actions alleged herein to have been undertaken by Defendant were undertaken by Defendant and each and every one of the Doe defendants individually, were actions that each of them caused to occur, were actions that each of them authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions in which each of them assisted, participated or otherwise encouraged, and are actions for which each of them is liable. Zynga is further informed and believes and on that basis alleges that Defendant and each of the Doe defendants aided and abetted the actions set forth below in that each of them had knowledge of those actions, provided assistance and benefitted from those actions in whole or in part, acted at all times as the agent of the others, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of the others.

JURISDICTION AND VENUE

10. This action arises under the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*, particularly under 15 U.S.C. §§ 1114 and 1125, as well as state unfair competition law and the common law of trademark infringement, passing off and unfair competition. This Court has jurisdiction of the federal claims under 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116, 1121, and 1125. This Court has supplemental jurisdiction of the state law claims under 28 U.S.C. §§ 1367(a) and 1338(b), those claims being joined with a substantial and related claim under the Trademark Laws of the United States and so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

11. Zynga is informed and believes and on that basis alleges that this Court has personal jurisdiction over Defendant, which resides in this District and has directed tortious acts at Zynga in this District, and has committed tortious acts that it knew or should have known would cause injury to Zynga in this District.

12. Defendant's contacts with this District are numerous and substantial. Upon information and belief, Defendant conducts business operations within this District at 1 Hallidie Plaza, 2nd Floor, San Francisco, CA 94102. Upon information and belief, Defendant's principals are based in and/or conduct business for Defendant in this District.

13. Venue is proper in this district under 28 U.S.C. §§ 1391(b).

INTRADISTRICT ASSIGNMENT

14. This being an Intellectual Property Action, the Court's Assignment Plan provides for assignment of this Action on a district-wide basis. To the extent this Action may be deemed to have arisen in a particular county within this District, that county is San Francisco County on the grounds that a substantial part of the events or omissions which give rise to Zynga's claims occurred in San Francisco County, where Zynga is located.

FACTUAL ALLEGATIONS

Zynga Is the Creator of Leading Social Games

15. Zynga is a leader in social gaming – games that people can play together over the Internet – and its games are among the most popular Internet and mobile applications. Zynga's games are available to consumers through various platforms, including Facebook, the Apple iTunes store (available on Apple's iPhone and iPad products through the iOS mobile operating system), and Google Play (available through the Android mobile operating system).

16. Since its founding in 2007, Zynga has created and published some of the world's most successful social games, including its famous WITH FRIENDS family of games.

Zynga's Valuable WITH FRIENDS Games and Family of Marks



17. Zynga's WITH FRIENDS games are among the most popular web-based and mobile games in the world. For example, the WORDS WITH FRIENDS® and SCRAMBLE WITH FRIENDS® games have been downloaded tens of millions of times, including on the Apple and Android platforms, which has resulted in millions of dollars of revenue.


18. As of January 2013 – prior to the launch of Defendant's application offered under the infringing and diluting mark – the WITH FRIENDS family of games and marks included WORDS WITH FRIENDS®, SCRAMBLE WITH FRIENDS®, HANGING WITH FRIENDS®, CHESS WITH FRIENDS®, GAMES WITH FRIENDS®, MATCHING WITH FRIENDS™, GEMS WITH FRIENDS™ and RUNNING WITH FRIENDS™.

19. During all times relevant to this lawsuit, Zynga has promoted the WITH FRIENDS family of games together as a family, identified by the distinctive and famous WITH FRIENDS

1 suffix. Among other things, Zynga has advertised the WITH FRIENDS family of games on
2 Zynga.com, ZyngaWithFriends.com, and on Facebook, and also has promoted the WITH FRIENDS
3 family of games to millions of potential consumers through advertisements and promotions. Third-
4 party websites and news outlets also have recognized the WITH FRIENDS family of games as
5 originating solely from Zynga. As a result of Zynga's extensive marketing efforts and the
6 unmatched success of its WITH FRIENDS family of games, among other reasons, Facebook users
7 and other users of online and mobile social games and services have come immediately to associate
8 the distinctive WITH FRIENDS suffix with Zynga.

9 20. Zynga is the owner of numerous United States Federal Trademark Registrations that
10 include or consist of the term WITH FRIENDS. Zynga's rights in these registrations, including
11 those shown below, all predate Defendant's use of "Bang With Friends":

12 Mark	Reg. No.	Filing Date	Registration Date
13 WITH FRIENDS	4354444	April 15, 2011	June 18, 2013
14  15 (WITH FRIENDS & Design)	4348666	January 12, 2011	June 11, 2013
16 WORDS WITH FRIENDS	3924543	September 4, 2009	March 1, 2011
17 WORDS WITH FRIENDS	4348670	January 21, 2011	June 11, 2013
18  19 (WORDS WITH FRIENDS & 20 Design)	4348668	January 12, 2011	June 11, 2013
21 SCRAMBLE WITH FRIENDS	4161430	January 5, 2012	June 19, 2012
22 HANGING WITH FRIENDS	4211214	June 23, 2011	September 18, 2012
23  24 (HANGING WITH FRIENDS & 25 Design)	4207352	June 23, 2011	September 11, 2012
26 CHESS WITH FRIENDS	3704619	February 9, 2009	November 3, 2009

1 2 3 4	 (CHESS WITH FRIENDS & Design)	4348667	January 12, 2011	June 11, 2013
5	GAMES WITH FRIENDS	3704620	February 9, 2009	November 3, 2009

6 Copies of Zynga's registrations are attached as **Exhibit A**, along with printouts from the
7 Trademark Office's electronic database showing the current status and title of these registrations.

8 21. Zynga also is the owner of numerous United States Federal Trademark Applications
9 that include or consist of the term WITH FRIENDS. Zynga's rights in these applications, including
10 but not limited to those shown below, all predate Defendant's use of "Bang With Friends":

11	Mark	Ser. No.	Filing Date
12	MATCHING WITH FRIENDS	85648957	June 11, 2012
13	MATCHING WITH FRIENDS	85645173	June 6, 2012
14	GEMS WITH FRIENDS	85700949	August 10, 2012
15	GEMS WITH FRIENDS	85720965	September 5, 2012
16	RUNNING WITH FRIENDS	85829443	January 22, 2013
17	RUNNING WITH FRIENDS	85837003	January 30, 2013 (with trademark priority of November 1, 2012)

18 Copies of Zynga's applications are attached as **Exhibit B**, along with printouts from the
19 Trademark Office's electronic database showing the current status and title of these applications.
20 The registrations and applications listed in Paragraphs 20 and 21 are collectively referred to herein
21 as the "WITH FRIENDS Marks."

22 22. In addition to the WITH FRIENDS Marks noted above, the WITH FRIENDS suffix
23 acquired distinctiveness within the market for Internet apps as an indicator of source prior to any
24 use in commerce of "Bang With Friends" by Defendant. The aforementioned family of marks that
25 has obtained this acquired distinctiveness, each mark of which consists of or incorporates the term
26 WITH FRIENDS, shall hereinafter be called the "WITH FRIENDS Family of Marks."

1 **Zynga's Efforts to Prevent the Unauthorized Uses of WITH FRIENDS Marks**

2 23. Zynga's games compete on websites and mobile platforms with hundreds of social
3 games and other apps. Unfortunately, following and based on the success of Zynga's WITH
4 FRIENDS family of games, a number of entities have attempted to adopt names that combine (1) a
5 word that connotes the particular app's theme, with (2) Zynga's distinctive and famous WITH
6 FRIENDS suffix. Such entities thereby seek to use names that will confuse consumers, trade off of
7 Zynga's popularity, and exploit the goodwill Zynga has developed in the WITH FRIENDS Family
8 of Marks.

9 24. Zynga has diligently policed its rights in the WITH FRIENDS Family of Marks
10 against such would-be infringers, including through the use of cease-and-desist letters, by instituting
11 opposition proceedings with the United States Patent and Trademark Office's ("USPTO")
12 Trademark Trial and Appeal Board, by direct outreach to the infringers, and through other means.

13 25. Notably, the USPTO itself has rejected multiple third parties' efforts to register
14 marks using the WITH FRIENDS suffix. The USPTO has concluded that, "given the similarity of
15 the marks and relatedness of [A]pplicant's goods and services to the goods of [Zynga], confusion as
16 to source is likely."

17 26. For example, the USPTO has rejected "Crosswords With Friends," "Yacht With
18 Friends," "Fitness With Friends," "Fantasy With Friends," "More Fun With Friends," and numerous
19 others in light of Zynga's WITH FRIENDS marks.

20 **Defendant's Deliberate Efforts to Trade On and Infringe**

21 **Zynga's WITH FRIENDS Marks**

22 27. In blatant disregard of Zynga's rights in its famous WITH FRIENDS games and
23 marks, Defendant selected "Bang With Friends" for its sex-related social network app and adopted a
24 sexually graphic logo to promote it.

25 28. According to public reports, in December 2012, over the course of a night and with
26 the help of "a lot of Red Bull and Vodka," Defendant's principals created an Internet app for
27 matching up Facebook social network "friends" anonymously for casual sex. On information and
28 belief, they chose the name "Bang With Friends" – combining the slang term for sex, "bang," with

1 Zynga's famous and distinctive WITH FRIENDS mark – to get the app noticed. Defendant then
2 “came up with the racy logo and decided to just go full speed ahead with making it as funny and as
3 objectionable as possible.”

4 29. Upon information and belief, on or about December 9, 2012, the Internet domain
5 name <bangwithfriends.com> was registered. That domain now advertises the Facebook and
6 mobile “Bang With Friends” app with the tagline: “anonymously find friends who are down for the
7 night.” According to the official Facebook page, the “Bang With Friends” app was launched on
8 January 23, 2013.

9 30. Upon information and belief, on or about January 24, 2013, defendant Bang With
10 Friends, Inc. was incorporated in Delaware.

11 31. Zynga is informed and believes, and on that basis alleges, that Defendant selected the
12 name “Bang With Friends” for its casual sex matchmaking app with Zynga's game trademarks fully
13 in mind.

14 32. Defendant was or should have been fully aware of Zynga's success and Zynga's
15 WITH FRIENDS family of games prior to selecting the name for its casual sex matchmaking app.
16 Indeed, upon information and belief, Defendant's co-founder Colin Hodge played one or more of
17 Zynga's WITH FRIENDS family of games prior to the registration of the domain name
18 <bangwithfriends.com>.

19 33. In fact, Defendant itself has highlighted a direct connection with Zynga's most
20 popular WITH FRIENDS game, WORDS WITH FRIENDS®, in a Tweet it published to promote
21 the “Bang With Friends” service on Twitter:

22 **“Wow. Words w/ Friends was... safer – Bang With Friends.”**

23 34. Media outlets and the consuming public at large also have made this connection.
24 Following are just a few of the public comments:

- 25 • **“a play on Zynga's . . . Words With Friends”**
- 26 • **“[i]t's like Words With Friends, without the letter tiles and**
- 27 **clothes”**

- “Words with Friends, Scramble with Friends and now, *Bang with Friends?*”

35. Further evidence of this association can be found on other Twitter posts:

- “new member of the Chess with Friends and Words with Friends family: Bang with friends”
- “Bang With Friends is the new Words With Friends”
- “I’ve played ‘Words with Friends,’ ‘Scramble with Friends,’ etc...but there’s a ‘Bang with Friends’ FB app? Classy”

36. Zynga never authorized Defendant to use the distinctive WITH FRIENDS suffix that identifies Zynga’s WITH FRIENDS family of games, nor would it authorize a game or application name – especially one related to vulgar subject matter such as Defendant’s social networking application – to use it, especially where it is likely to cause consumer confusion and diminish the value of the WITH FRIENDS Family of Marks.

**Zynga Initially Sought Defendant’s Compliance with the Laws Informally,
But After Initially Indicating It Would Engage,**

Defendant Has Gone on Not Just to Continue Its Infringement, But to Expand upon It

37. Once Defendant’s infringement was detected, Zynga attempted to get Defendant to cease use of Zynga’s WITH FRIENDS mark through informal efforts.

38. But even trying to make contact with Defendant was not easy – as intended by Defendant. As Defendant’s principals now have acknowledged publicly, they intentionally took active steps to conceal their identity because, as one explained, the service is “a little raunchy.” Corporate filings were masked. Defendant did not publicly list its officers, directors or agents and instead provided an email address of “pimpin@bangwithfriends.com” for inquiries.

39. Zynga nevertheless undertook significant efforts to ferret out the identity of one of Defendant’s principals. After contact was made, Zynga attempted to resolve this dispute without the need for court intervention. Defendant engaged in discussions with Zynga about changing the name from “Bang With Friends.” But it now appears that either was a ploy or Defendant has reconsidered in light of recent attention showered on it.

1 40. Upon information and belief, at about that time, "Bang With Friends" received
2 significant public attention, growth in users, and in May 2013, the identities of two of Defendant's
3 co-founders were "leaked." They and others associated with Defendant then began a publicity blitz,
4 making personal appearances, doing interviews, and otherwise promoting "Bang With Friends."
5 Defendant also has increased its nationwide marketing efforts.

6 41. Despite being on clear notice of Zynga's rights and objections, and without
7 notifying Zynga of its plans, Defendant worked toward a massive expansion into the mobile
8 market leveraging Zynga's WITH FRIENDS mark.

9 42. It released two new "Bang With Friends" casual sex matchmaking apps in May
10 2013.

11 43. In the weeks since, Defendant's plan to expand its infringing activities aggressively
12 was revealed by a person identified as a "Bang With Friends" investor. To Zynga's great surprise,
13 this investor stated that Defendant intends

14 **"to go from 'Bang' to 'Hang' to 'Tennis' to 'Games' to other**
15 **activities."**

16 44. In keeping with that strategy, Defendant recently has introduced a new "Hang"
17 feature that immediately became known as "Hang With Friends," which is nearly identical to
18 Zynga's registered HANGING WITH FRIENDS® mark and game.

19 45. With what now appears to be a full-time team to support its illicit activities,
20 Defendant also continues to add new content features that violate Zynga's rights (including the
21 "Drinking With Friends" feature and the "threesome feature"). In addition, Defendant continues
22 to press forward with ambitious, sex-related advertising and marketing of "Bang With Friends,"
23 including the distribution of condoms emblazoned with its infringing name and "racy" logo at
24 various events nationwide.

25 46. These actions have made clear that Defendant either was leading Zynga on in the
26 parties' discussions and actually never intended to change its name voluntarily, or has become too
27 enamored with the name and associated celebrity/notoriety to do so now.

28 47. As of the date of this filing, Defendant actively continues to promote the expanding

1 “Bang With Friends” service despite being on clear notice of Zynga’s rights and appears determined
2 to do so in willful defiance of Zynga’s intellectual property rights until barred by legal action.

3 **First Cause of Action**

4 **(Federal Trademark Infringement – 15 U.S.C. § 1114(1))**

5 48. Zynga repeats, realleges and incorporates Paragraphs 1-47 as though fully set forth in
6 this cause of action.

7 49. Prior to any use in commerce of “Bang With Friends” by Defendant, the WITH
8 FRIENDS®, WITH FRIENDS (& Design)®, WORDS WITH FRIENDS®, WORDS WITH
9 FRIENDS (& Design)®, SCRAMBLE WITH FRIENDS®, HANGING WITH FRIENDS®,
10 HANGING WITH FRIENDS (& Design)®, CHESS WITH FRIENDS®, CHESS WITH FRIENDS
11 (& Design)® and GAMES WITH FRIENDS® marks (collectively, the “WITH FRIENDS®
12 Registrations”), and each of them, were among Zynga’s WITH FRIENDS Family of Marks that
13 Zynga had used in connection with its famous social games on Facebook and other mobile and
14 social platforms.

15 50. As a result of Zynga’s substantial marketing and promotional efforts and the
16 tremendous success of Zynga’s WITH FRIENDS family of games generally, and each of the WITH
17 FRIENDS® Registrations specifically, consumers immediately associated the distinctive WITH
18 FRIENDS® Registrations with Zynga prior to any use in commerce of “Bang With Friends” by
19 Defendant.

20 51. In addition to the individual WITH FRIENDS® Registrations, the WITH FRIENDS
21 suffix has acquired distinctiveness within the market for social games as an indicator of source
22 before any use in commerce of “Bang With Friends” by Defendant. At all times relevant to this
23 lawsuit, consumers have immediately associated the WITH FRIENDS suffix with Zynga and its
24 reputation for creating dynamic and high-quality social games.

25 52. Defendant’s use in commerce of the name “Bang With Friends” in connection with
26 an online social networking application constitutes trademark infringement of Zynga’s rights in the
27 WITH FRIENDS® Registrations, and each of them, pursuant to 15 U.S.C. § 1114(1).

28 53. Defendant’s use in commerce of “Bang With Friends” is likely to cause confusion,

1 or to cause mistake, or to deceive consumers, who are likely to believe erroneously that "Bang With
2 Friends" originates from the same source as Zynga's WITH FRIENDS family of games, including
3 without limitation, those games offered under the WITH FRIENDS® Registrations, or is otherwise
4 affiliated, connected, or associated with Zynga, or sponsored or approved by Zynga, when in fact it
5 is not.

6 54. Defendant has knowingly and willfully infringed Zynga's trademark rights by
7 deliberately exploiting the substantial goodwill associated with Zynga's WITH FRIENDS family of
8 games, including without limitation, those games offered under the WITH FRIENDS®
9 Registrations. Zynga is informed and believes, and on that basis alleges, that Defendant selected
10 the name "Bang With Friends" with the express intent to cause confusion and to deceive consumers
11 into believing that "Bang With Friends" is one of, or otherwise associated with, Zynga's WITH
12 FRIENDS family of games, including those games or services offered under the WITH FRIENDS®
13 Registrations.

14 55. Zynga has no adequate remedy at law. Defendant's conduct as alleged herein has
15 caused, and if not enjoined will continue to cause, irreparable harm to Zynga's rights in its WITH
16 FRIENDS family of games generally, and in particular in each of its WITH FRIENDS®
17 Registrations, and to its business reputation and goodwill, as well as damages in an amount that
18 cannot be accurately computed at this time but will be proven at trial.

19 **Second Cause of Action**

20 **(Federal Trademark Infringement – 15 U.S.C. § 1125(a))**

21 56. Zynga repeats, realleges and incorporates Paragraphs 1-55 as though fully set forth in
22 this cause of action.

23 57. Prior to any use in commerce of "Bang With Friends" by Defendant, the WITH
24 FRIENDS®, WITH FRIENDS (& Design)®, WORDS WITH FRIENDS®, WORDS WITH
25 FRIENDS (& Design)®, SCRAMBLE WITH FRIENDS®, HANGING WITH FRIENDS®,
26 HANGING WITH FRIENDS (& Design)®, CHESS WITH FRIENDS®, CHESS WITH FRIENDS
27 (& Design)®, GAMES WITH FRIENDS®, MATCHING WITH FRIENDS™, GEMS WITH
28 FRIENDS™, and RUNNING WITH FRIENDS™ marks (collectively the "WITH FRIENDS

1 Marks”), and each of them, were among Zynga’s WITH FRIENDS Family of Marks, which Zynga
2 has used or intends to use in connection with its famous social games on Facebook and mobile
3 platforms.

4 58. As a result of Zynga’s substantial marketing and promotional efforts and the
5 tremendous success of Zynga’s WITH FRIENDS family of games generally, and each of the games
6 and services offered under the WITH FRIENDS Marks specifically, consumers immediately
7 associate the distinctive WITH FRIENDS Marks with Zynga prior to any use in commerce of
8 “Bang With Friends” by Defendant.

9 59. In addition to the individual WITH FRIENDS Marks, the WITH FRIENDS Family
10 of Marks has acquired distinctiveness within the market for social networking games as an indicator
11 of source prior to any use in commerce of “Bang With Friends” by Defendant. At all times relevant
12 to this lawsuit, consumers immediately have associated the distinctive WITH FRIENDS Marks
13 and/or the WITH FRIENDS Family of Marks with Zynga and its reputation for creating dynamic
14 and high-quality social games.

15 60. Defendant’s use in commerce of the name “Bang With Friends” in connection with
16 an online social networking application constitutes trademark infringement of Zynga’s rights in the
17 WITH FRIENDS Family of Marks, as well as Zynga’s rights in the each of the WITH FRIENDS
18 Marks, and unfair competition pursuant to 15 U.S.C. § 1125(a).

19 61. Defendant’s use in commerce of “Bang With Friends” is likely to cause confusion,
20 or to cause mistake, or to deceive consumers, who are likely to believe erroneously that “Bang With
21 Friends” originates from the same source as Zynga’s WITH FRIENDS family of games, including
22 without limitation the games and services offered under the WITH FRIENDS Family of Marks
23 and/or the specific WITH FRIENDS Marks, or is otherwise affiliated, connected, or associated with
24 Zynga, or sponsored or approved by Zynga, when in fact it is not.

25 62. Defendant has knowingly and willfully infringed Zynga’s trademark rights by
26 deliberately exploiting the substantial goodwill associated with Zynga’s WITH FRIENDS Family of
27 Marks, and with each of its WITH FRIENDS Marks. Zynga is informed and believes and on that
28 basis alleges that Defendant selected the name “Bang With Friends” with the express intent to cause

1 confusion and to deceive consumers into believing that "Bang With Friends" is one of, or otherwise
2 associated with, Zynga's WITH FRIENDS family of games, including those games or services
3 offered under the WITH FRIENDS Family of Marks and/or the specific WITH FRIENDS Marks.

4 63. Zynga has no adequate remedy at law. Defendant's conduct as alleged herein has
5 caused and if not enjoined will continue to cause irreparable harm to Zynga's rights in the WITH
6 FRIENDS Family of Marks, as well as its rights in each of the WITH FRIENDS Marks, and to its
7 business reputation and goodwill, as well as damages in an amount that cannot be accurately
8 computed at this time but will be proven at trial.

9 **Third Cause of Action**

10 **(Federal False Designation of Origin – 15 U.S.C. § 1125(a))**

11 64. Zynga repeats, realleges and incorporates Paragraphs 1-63 as though fully set forth in
12 this cause of action.

13 65. Zynga owns the trademark rights in the distinctive WITH FRIENDS Family of
14 Marks for use in connection with social networking games, including without limitation each of the
15 WITH FRIENDS Marks.

16 66. As a result of Zynga's substantial marketing and promotional efforts, as well as the
17 tremendous success of Zynga's WITH FRIENDS family of games, the WITH FRIENDS suffix has
18 acquired distinctiveness within the market for social games as an indicator of source prior to any
19 use in commerce of "Bang With Friends" by Defendant. At all times relevant to this lawsuit,
20 consumers have immediately associated the distinctive WITH FRIENDS suffix with Zynga and its
21 reputation for creating dynamic and high quality social networking games.

22 67. Consumers who come across "Bang With Friends" are likely to believe, erroneously,
23 that "Bang With Friends" is another new addition to, or is otherwise affiliated with, Zynga's WITH
24 FRIENDS family of games, including those games or services offered under the WITH FRIENDS
25 Family of Marks and/or the specific WITH FRIENDS Marks.

26 68. Defendant's use in commerce of the suffix WITH FRIENDS in connection with an
27 online social networking application constitutes a false designation of origin pursuant to 15 U.S.C. §
28 1125(a).

69. Defendant's use in commerce of "Bang With Friends" is likely to cause confusion, or to cause mistake or to deceive consumers into believing that Defendant's "Bang With Friends" app originates from the same source as Zynga's WITH FRIENDS family of games, including without limitation the games and services offered under the WITH FRIENDS Family of Marks and/or the specific WITH FRIENDS Marks, or is otherwise affiliated, connected, or associated with Zynga, or sponsored or approved by Zynga, when in fact it is not.

70. Defendant has knowingly and willfully infringed Zynga's trademark rights by deliberately exploiting the substantial goodwill associated with Zynga's WITH FRIENDS Family of Marks, as well as the goodwill associated with each of the WITH FRIENDS Marks, and each of them. Zynga is informed and believes that Defendant selected the name "Bang With Friends" with the express intent to cause confusion and to deceive users of social games and services into believing that "Bang With Friends" is one of, or otherwise associated with, Zynga's WITH FRIENDS family of games, including those games or services offered under the WITH FRIENDS Family of Marks and/or the specific WITH FRIENDS Marks.

71. Zynga has no adequate remedy at law. Defendant's conduct as alleged herein has caused and if not enjoined will continue to cause irreparable harm to Zynga's rights in its WITH FRIENDS Family of Marks, as well as its rights in each of its WITH FRIENDS Marks, and to its business reputation and goodwill, as well as damages in an amount that cannot be accurately computed at this time but will be proven at trial.

Fourth Cause of Action

(Federal Dilution – 15 U.S.C. § 1125(c))

72. Zynga repeats, realleges and incorporates Paragraphs 1-71 as though fully set forth in this cause of action.

73. Zynga owns the trademark rights in the distinctive WITH FRIENDS Family of Marks, which include the WITH FRIENDS Marks, each of which is used in connection with social networking games and related goods and services.

74. Zynga's WITH FRIENDS Family of Marks is famous in that it is widely recognized by the general consuming public of the United States as a designation of Zynga's goods and

1 services. Zynga's WITH FRIENDS Family of Marks became famous throughout the United States
2 prior to any use in commerce of the name "Bang With Friends" by Defendant.

3 75. Furthermore, Zynga's WORDS WITH FRIENDS® and WORDS WITH FRIENDS
4 (& Design)® marks (collectively, the "WORDS WITH FRIENDS® Marks"), and SCRAMBLE
5 WITH FRIENDS® mark independently are famous in that they are widely recognized by the
6 general consuming public of the United States as a designation of Zynga's goods and services.
7 Zynga's WORDS WITH FRIENDS® Marks and SCRAMBLE WITH FRIENDS® mark became
8 famous throughout the United States prior to any use in commerce of the name "Bang With
9 Friends" by Defendant.

10 76. Defendant's use in commerce of the name "Bang With Friends" in connection with
11 an online social networking application is likely to dilute the famous WITH FRIENDS Family of
12 Marks and/or the famous WORDS WITH FRIENDS® Marks and SCRAMBLE WITH FRIENDS®
13 mark, both by impairing the distinctiveness of and tarnishing these famous marks, in violation of 15
14 U.S.C. § 1125(c).

15 77. The similarity between Defendant's "Bang With Friends" mark and Zynga's famous
16 WITH FRIENDS Family of Marks and/or the famous WORDS WITH FRIENDS® Marks and
17 SCRAMBLE WITH FRIENDS® mark gives rise to an association between the parties' respective
18 marks that is likely to impair the distinctiveness of and tarnish the famous WITH FRIENDS Family
19 of Marks and/or the famous WORDS WITH FRIENDS® Marks and SCRAMBLE WITH
20 FRIENDS® mark.

21 78. Defendant has knowingly and willfully sought to dilute Zynga's famous WITH
22 FRIENDS Family of Marks and/or the famous WORDS WITH FRIENDS® Marks and
23 SCRAMBLE WITH FRIENDS® mark. Zynga is informed and believes that Defendant selected the
24 name "Bang With Friends" with the express intent to associate "Bang With Friends" with Zynga's
25 famous WITH FRIENDS Family of Marks and/or the famous WORDS WITH FRIENDS® Marks
26 and SCRAMBLE WITH FRIENDS® mark in the minds of consumers.

27 79. Zynga has no adequate remedy at law. Defendant's conduct as alleged herein has
28 caused and if not enjoined will continue to cause irreparable harm to Zynga's rights in its WORDS

1 WITH FRIENDS® Marks and SCRAMBLE WITH FRIENDS® mark, and to its business
2 reputation and goodwill, as well as damages in an amount that cannot be accurately computed at
3 this time but will be proven at trial.

4 **Fifth Cause of Action**

5 **(California Statutory Unfair Competition -**

6 **California Business and Professions Code § 17200, *et seq.*)**

7 80. Zynga repeats, realleges and incorporates Paragraphs 1-79 as though fully set forth in
8 this cause of action.

9 81. Defendant's use in commerce of the name "Bang With Friends" in connection with
10 an online social networking application violates Zynga's rights in the WITH FRIENDS Family of
11 Marks, as well each of the WITH FRIENDS Marks, and is a deliberate, willful, intentional and
12 wrongful attempt to trade on Zynga's goodwill, reputation and financial investments in the WITH
13 FRIENDS Family of Marks, as well each of the WITH FRIENDS Marks.

14 82. By reason of Defendant's conduct as alleged herein, Defendant has engaged in
15 unlawful, unfair and/or fraudulent ongoing business practices in violation of California Business &
16 Professions Code § 17200.

17 83. As a direct result of Defendant's unfair competition with regard to the WITH
18 FRIENDS Family of Marks, as well each of the WITH FRIENDS Marks, Defendant has unlawfully
19 acquired, and continues to acquire on an ongoing basis, an unfair competitive advantage and has
20 engaged in, and continues to engage in, wrongful business conduct to Defendant's monetary
21 advantage and to the detriment of Zynga.

22 84. Defendant's conduct as alleged herein has been undertaken willfully and
23 maliciously, and with full knowledge and in conscious disregard of Zynga's rights.

24 85. Defendant's illegal and unfair business practices are continuing, and injunctive relief
25 pursuant to California Business and Professions Code § 17203 is necessary to prevent and restrain
26 further violations by Defendant.

27 86. This Court has jurisdiction over the subject matter of this claim pursuant to the
28 provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial

1 and related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

2 **Sixth Cause of Action**

3 **(Common Law Trademark Infringement of the Marks)**

4 87. Zynga repeats, realleges and incorporates Paragraphs 1-86 as though fully set forth in
5 this cause of action.

6 88. Defendant's use in commerce of the name "Bang With Friends" in connection with
7 an online social networking application violates Zynga's rights in the WITH FRIENDS Family of
8 Marks, as well each of the WITH FRIENDS Marks, constitutes trademark infringement and is
9 likely to cause confusion, deception and mistake among the consuming public and trade as to the
10 source of, and authorization for the "Bang With Friends" app sold and/or advertised by Defendant
11 in violation of the common law of the State of California.

12 89. Defendant's conduct as alleged herein has been undertaken willfully and
13 maliciously, and with full knowledge and in conscious disregard of Zynga's rights.

14 90. As well as harming the public, Defendant's conduct as alleged herein has caused and
15 will continue to cause Zynga irreparable harm for which there is no adequate remedy at law, and is
16 also causing damage to Zynga in an amount which cannot be accurately computed at this time but
17 will be proven at trial.

18 91. This Court has jurisdiction over the subject matter of this claim pursuant to the
19 provisions of 28 U.S.C. § 1338(b), this being a claim of infringement joined with a substantial and
20 related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

21 **Seventh Cause of Action**

22 **(California Common Law Passing Off and Unfair Competition)**

23 92. Zynga repeats, realleges and incorporates Paragraphs 1-91 as though fully set forth in
24 this cause of action.

25 93. By virtue of its conduct as alleged herein, Defendant has engaged and is engaging in
26 unfair competition and passing off under the common law of the State of California.

27 94. As well as harming the public, Defendant's conduct as alleged herein has caused and
28 will continue to cause Zynga irreparable harm for which there is no adequate remedy at law, and is

1 also causing damage to Zynga in an amount which cannot be accurately computed at this time but
2 will be proven at trial.

3 95. Defendant's actions were undertaken intentionally to obtain an unfair advantage over
4 Zynga and in conscious disregard of Zynga's rights, and were malicious, oppressive and/or
5 fraudulent. Zynga requests punitive or exemplary damages pursuant to California Civil Code §
6 3294(a) in an amount sufficient to punish and deter Defendant and to make an example of it.

7 96. This Court has jurisdiction over the subject matter of this claim pursuant to the
8 provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial
9 and related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

10 PRAYER FOR RELIEF

11 Wherefore, Zynga prays for judgment as follows:

12 A. That the Court enter a finding that use by Defendant of the name "Bang With
13 Friends" infringes Zynga's rights in the WITH FRIENDS Family of Marks, as well as its rights in
14 the WITH FRIENDS®, WITH FRIENDS (& Design)®, WORDS WITH FRIENDS®, WORDS
15 WITH FRIENDS (& Design)®, SCRAMBLE WITH FRIENDS®, HANGING WITH FRIENDS®,
16 HANGING WITH FRIENDS (& Design)®, CHESS WITH FRIENDS®, CHESS WITH FRIENDS
17 (& Design)®, GAMES WITH FRIENDS®, MATCHING WITH FRIENDS™, GEMS WITH
18 FRIENDS™, and RUNNING WITH FRIENDS™ marks, and each of them;

19 B. That the Court enter a finding that use by Defendant of the name "Bang With
20 Friends" is likely to cause dilution of Zynga's famous WITH FRIENDS Family of Marks and
21 famous WORDS WITH FRIENDS® Marks and SCRAMBLE WITH FRIENDS® mark by blurring
22 and by tarnishment;

23 C. That the Court enter a preliminary injunction and a permanent injunction prohibiting
24 Defendant, as well as its officers, directors, predecessors, successors, agents, employees,
25 representatives, and all persons, corporations or other entities acting in concert or participation with
26 Defendant from:

27 i. Using the name "Bang With Friends" in connection with any social networking
28 applications in California and throughout the United States;

- 1 ii. Infringing any of Zynga's intellectual property rights in its WITH FRIENDS Family
2 of Marks;
- 3 iii. Infringing any of Zynga's intellectual property rights in the WITH FRIENDS®,
4 WITH FRIENDS (& Design)®, WORDS WITH FRIENDS®, WORDS WITH
5 FRIENDS (& Design)®, SCRAMBLE WITH FRIENDS®, HANGING WITH
6 FRIENDS®, HANGING WITH FRIENDS (& Design)®, CHESS WITH
7 FRIENDS®, CHESS WITH FRIENDS (& Design)®, GAMES WITH FRIENDS®,
8 MATCHING WITH FRIENDS™, GEMS WITH FRIENDS™, and RUNNING
9 WITH FRIENDS™ marks, or any of them;
- 10 iv. Continuing to engage in any activity that is likely to dilute the value of Zynga's
11 famous WITH FRIENDS Family of Marks or Zynga's famous WORDS WITH
12 FRIENDS® Marks or SCRAMBLE WITH FRIENDS® mark, or either of them;
- 13 v. Engaging in any conduct that tends falsely to represent, or is likely to confuse,
14 mislead or deceive members of the public, to believe that the actions of Defendant or
15 any of its officers, directors, predecessors, successors, agents, employees,
16 representatives, or persons, corporations or other entities acting in concert or
17 participation with Defendant are sponsored, approved, or licensed by Zynga, or are
18 in any way connected or affiliated with Zynga;
- 19 vi. Affixing, applying, annexing, or using in connection with the manufacture,
20 distribution, advertising, sale, and/or offering for sale or other use of any goods or
21 services, a false description or representation, including words or other symbols,
22 tending to falsely describe or represent such goods as being those of Zynga,
23 including without limitation the WITH FRIENDS suffix;
- 24 vii. Otherwise competing unfairly with Zynga in any manner; and
- 25 viii. Effecting assignments or transfers, forming new entities or associations or utilizing
26 any other device for the purpose of circumventing or otherwise avoiding the
27 prohibitions set forth in subparagraphs (i)-(vii) above.
- 28

1 D. That the Court enter a finding that Defendant's actions were willful, deliberate, and
2 malicious;

3 E. That the Court award Zynga damages in accordance with applicable law, including
4 without limitation three times the amount of any and all profits realized by Defendant from the use
5 of the "Bang With Friends" name in accordance with 15 U.S.C. § 1117(a);

6 F. That the Court award Zynga punitive damages in an amount sufficient to punish and
7 deter Defendant;

8 G. That the Court find that this is an exceptional case and award Zynga its reasonable
9 attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117(a) and/or California law;

10 H. That the Court retain jurisdiction of this action for the purpose of enabling Zynga to
11 apply to the Court at any time for such further orders and interpretation or execution of any order
12 entered in this action, for the modification of any such order, for the enforcement or compliance
13 therewith and for the punishment of any violations thereof; and

14 I. For such other and further relief as the Court may deem just and equitable.

15 **PLAINTIFF ZYNGA INC. HEREBY DEMANDS A TRIAL BY JURY.**

16 DATED: July 30, 2013

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

19 By: 

DENNIS L. WILSON

21 Attorneys for Plaintiff
22 Zynga Inc.

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25 KILPATRICK TOWNSEND 65590397 1